IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Bail Appl..No. 4432 of 2007()

Cr.NO.8 OF 2007 OF THE PALA EXCISE RANGE

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: PETITIONER/ACCUSED

T.S.SHAIB, S/O.SANKARAN,
THOPPIL HOUSE, KADANADU P.O.,
KOTTAYAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE EXCISE INSPECTOR,
PALA EXCISE RANGE - THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4432 of 2007

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Dated this the 23rd day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegation inter alia, under the Abkari Act. He allegedly owns and runs a restaurant. In that restaurant, there was allegedly illicit sale of liqour. Six bottles of beer and 200ml of Indian Made Foreign Liquor were allegedly seized from the premises. 2nd accused, the one who has actually effected the sale and was present at the premises, was arrested on 01.07.07. The investigation is in progress. Petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He does not deserve to suffer the trauma of arrest and incarceration. Appropriate directions under Section 438 Cr.P.C may in these circumstances be issued, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. In the wake of the opposition by the learned Public Prosecutor, even regular bail can be granted to the petitioner only if this Court is in a

position to entertain the twin satisfactions under Section 41A of the Kerala Abkari Act. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of extraordinary equitable discretion under Section 438. I find merit in the opposition by the learned Public Prosecutor. This is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the learned Magistrate having jurisdiction. He must then seek regular bail in the normal and ordinary course. I have no reason to assume that the learned Magistrate would not consider the application for regular bail on merits, in accordance with law and expeditiously. Every court must do the same.

4. In the result, this petition is dismissed. I may however, hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj